notes, "KPMG conducted a third party test on the accuracy of Verizon NJ's white page listings, and found that Verizon NJ was accurately provisioning the directory listing database." BPU Report at 64; see also Lacouture/Ruesterholz Reply Decl. ¶¶ 80-81.

D. Reciprocal Compensation.

The BPU has found that Verizon "complies" with its obligations to provide reciprocal compensation for transportation and termination of local calls to competing carriers in New Jersey. BPU Report at 73. A few CLECs nonetheless raise billing disputes related to reciprocal compensation for Internet-bound traffic. See AT&T at 41-42; XO at 4-6. As the Commission has repeatedly found, however, whether a BOC pays reciprocal compensation for Internet-bound traffic "is not relevant to compliance with checklist item 13," and such claims thus have no place in a review of a section 271 application. Connecticut Order ¶ 67; accord Pennsylvania Order ¶ 119; Massachusetts Order ¶ 215; see BPU Report at 73 (following this precedent); see also Lacouture/Ruesterholz Reply Decl. ¶ 83. Moreover, as the BPU has noted, claims by some CLECs "that they are entitled to under their interconnection agreements to reciprocal compensation for Internet-bound traffic are already the subject of pending complaint proceedings . . . will be resolved by the Board in due course and . . . previous FCC determinations on this subject [hold] that it is neither appropriate nor necessary to resolve them in this proceeding." BPU Report at 73; see Pennsylvania Order ¶ 118 ("section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions").[17]

[17] Cablevision complains (at 13) that Verizon has refused to pay the tandem reciprocal compensation rate for certain traffic. The BPU found that it is "unnecessary and inappropriate to consider" this claim since it "was the subject of an arbitration

E. Operations Support Systems.

Based on a "comprehensive review," the New Jersey BPU concluded that Verizon's OSS in New Jersey "are performing in volume today," that Verizon "processes CLEC orders timely and accurately," that "it is ready to handle reasonably expected future volumes" and that "with the inclusion of electronic billing metrics and quality assurance processes" Verizon already has agreed to implement, Verizon "meets the FCC's requirements for 271 approval." BPU Report at 1, 30, 33, 43. As Verizon demonstrated in its Application, its systems are handling large and increasing volumes of transactions in New Jersey. For example, in the first ten months of 2001, Verizon's pre-ordering systems processed an average of nearly 130,000 transactions per month in New Jersey (and nearly 2.4 million across the former Bell Atlantic footprint), its service order processor in New Jersey handled approximately 413,000 orders (and its ordering interfaces and common systems across the former Bell Atlantic footprint processed more than 8.6 million orders), its maintenance and repair systems processed approximately 5,300 maintenance transactions per month in New Jersey (and approximately 135,000 per month across the former Bell Atlantic footprint), and its billing systems were producing more than 700 wholesale bills per month and creating more than 200 million call records. See Application at 57-58, 65-67.

Moreover, "[a] test of Verizon NJ's OSS was conducted by a third-party evaluator, KPMG Consulting, acting under the direct supervision of the Board." BPU Report at 1. The test — which even WorldCom has conceded represents an "excellent

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proceeding, which has recently concluded." BPU Report at 73; see Pennsylvania Order ¶ 118.

job" and "one of the best"[18] — "covered 536 individual test points across five test domains (pre-ordering, ordering and provisioning; maintenance and repair; billing; relationship management and infrastructure; and performance metrics) required by Section 271." BPU Report at 1. KPMG performed its test "through both an evaluation of Verizon NJ's existing policies and procedures and KPMG Consulting's creation of a 'pseudo CLEC' doing business in New Jersey." Id. The New Jersey BPU "invested 18 months on the KPMG test through 'military style' testing to a zero defect conclusion," making New Jersey "the first state to conclude the KPMG testing regime with the clean slate of no outstanding KPMG Exceptions or Observations." Id. at 30. Based on all of this, the BPU found that the results of the KPMG test "confirms" the BPU's own conclusion that Verizon "meets the requirements for 271 approval." Id. at 43. And the DOJ likewise has concluded that "Verizon has submitted evidence to show that thorough, independent testing of virtually all aspects of its OSS in New Jersey demonstrated them to be highly satisfactory," and that "there have been few complaints regarding Verizon's New Jersey OSS." DOJ Eval. at 6.

Several parties take issue with a few aspects of Verizon's systems, but as demonstrated below these claims provide no basis for overruling the BPU's carefully reached determination.

Ordering. The BPU found that Verizon "has shown both that it processes CLEC orders timely and accurately, and that it is ready to handle reasonably expected future

[18] Consultative Report of the Application of Verizon-New Jersey, Inc. for FCC Authorization To Provide In-Region, InterLATA Services in New Jersey, Transcript of Hearing, Docket No. TO001090541, at 38 (NJ BPU Nov. 5, 2001) ("November 5, 2001 Transcript") (Application, App. B, Tab 5).

volumes." BPU Report at 33. AT&T raises three issues with respect to Verizon's ordering systems in New Jersey, but none has merit.

First, AT&T claims (at 3, 17) that Verizon has not demonstrated that its Service Order Processor in New Jersey can support large volumes of UNE-based entry. This is untrue. As the BPU found, Verizon "has provided sufficient evidence of satisfactory OSS performance based upon the combination of commercial usage and KPMG test results." BPU Report at 30. Indeed, Verizon demonstrated in its Application that, in 2000, the New Jersey SOP processed more than 425,000 LSRs, and in the first ten months of 2001 it processed 413,000 LSRs. See Application at 61. Moreover, "the volume testing conducted by KPMG presented Verizon NJ's SOP with a greater than expected level of near term orders," and "[t]he results of this volume testing were satisfactory." BPU Report at 30. And while AT&T complains (at 23 n.12) that the UNE volumes in New Jersey are lower than they were in New York, Pennsylvania, and Massachusetts at the time of Verizon's section 271 applications in those states, given that those three states are among the most competitive in the nation, that comparison in no way proves that volumes in New Jersey — which are substantial in their own right — are somehow too low. In addition, the BPU found that Verizon "is ready to handle reasonably expected future volumes," should volumes in New Jersey increase. BPU Report at 33. This is particularly true of volumes for platforms used to serve mass-market customers, for which order processing is typically simpler than for other kinds of UNE orders, and for which Verizon's performance consistently has been excellent. See Application at 47.

Second, AT&T claims (at 17) that the Commission should accord the KPMG test "minimal weight" because the test "was too limited in scope and depth." This is nonsense. As the BPU confirms, the KPMG "test was conducted in a fashion similar to that employed by KPMG — and relied upon by the Commission — in several other Verizon states. CLEC participation was solicited and there has been ample participation. The test condition issues raised by AT&T were anticipated and accounted for by the Board and KPMG." BPU Report at 30; see New York Order ¶ 100; Massachusetts Order ¶ 46; Pennsylvania Order ¶¶ 14, 33. Indeed, the KMPG test was not only modeled after substantially similar tests it conducted in New York, Massachusetts, and Pennsylvania, but was expanded beyond those previous tests in several respects. See Lacouture/Ruesterholz Decl. ¶ 14; McLean/Wierzbicki/Webster Reply Decl. ¶ 10. Moreover, the New Jersey test went beyond previous tests in that it proceeded until Verizon received a perfect score, signifying a "zero defect conclusion" and making New Jersey "the first state to conclude the KPMG testing regime with the clean slate of no outstanding KPMG Exceptions or Observations." BPU Report at 30.[19]

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[19] AT&T specifically complains (at 17-18) that KPMG evaluated each OSS function or domain separately, without evaluating how these functions operate on an integrated basis. This is incorrect. See, KPMG Consulting, Verizon New Jersey Inc. OSS Evaluation Project Final Report, Version 2.0, at 18 (rel. Oct. 12, 2001) (Application, App. C, Tab 4) ("Some scenarios . . . spanned multiple domains providing an end-to-end test of Verizon NJ's systems and processes."). In any event, the approach taken in New Jersey is the same approach that KPMG has taken in previous tests and which this Commission has found provides "persuasive evidence of Verizon's OSS readiness." Massachusetts Order ¶ 46. And while AT&T argues that, because the SOP in New Jersey is unique, KPMG should have diverged from past practices and conducted end-to-end volume testing here, the BPU found that "the volume testing conducted by KPMG presented Verizon's SOP with a greater than expected level of near term orders," and "[t]he results of this testing were satisfactory." BPU Report at 30. Moreover, while AT&T complains (at 18) that the volume testing of the New Jersey SOP failed to evaluate its performance in the provisioning and billing processes, as the BPU explains,

Finally, AT&T complains (at 20-21) about the flow-through rates in New Jersey. The BPU has found, however, that Verizon's "current overall order flow through level means that more orders are being handled via mechanized processes than manually," and that "where orders are processed manually, the performance data — verified by KPMG — appears to indicate that Verizon NJ has handled them satisfactorily." BPU Report at 33.

As Verizon demonstrated in its Application, and as AT&T concedes (at 21 n.11), Verizon's overall flow-through rates in New Jersey are comparable to the rates that the Commission found acceptable in New York and Massachusetts. See Application at 63; Massachusetts Order ¶ 78; New York Order ¶ 166. Moreover, for the largest category of orders in New Jersey — resale orders — the flow-through rates are higher in New Jersey than in Verizon's 271-approved states (both at the time of the 271 applications in those states and today). See Application at 63. And while AT&T argues that the Commission should focus exclusively on the flow-through rates for UNEs, Verizon's achieved flow-through rate for UNEs has been steadily increasing and was nearly 87 percent in October 2001. See Application at 63 n.62. As the Commission has held, such an "improving trend" of performance provides persuasive evidence that Verizon is complying with its checklist obligations. See, e.g., Massachusetts Order ¶¶ 140, 146; Kansas/Oklahoma Order ¶¶ 187, 192; Connecticut Order App. D, ¶ 8.

In any event, the Commission has held that that "flow-through has significantly less value as an indicator of deficiencies of [Verizon's] OSS" compared to Verizon's

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such testing was unnecessary because "these systems were subject to individual testing" and "since they are shared with Verizon NJ retail operations, they are performing in volume today." BPU Report at 30.

"overall ability to return timely order confirmation and rejection notices, accurately process manually handled orders, and scale its systems." New York Order ¶ 163; see also Massachusetts Order ¶ 77 (flow-through rates are "not so much an end in themselves" or a "'conclusive measure of nondiscriminatory access to ordering functions'") (quoting New York Order ¶ 161). And as the BPU found, Verizon's performance is strong with respect to each of these areas. See McLean/Wierzbicki/Webster Reply Decl. ¶ 21.

Billing. The BPU found that Verizon's "C2C data and the KPMG testing indicate that it meets th[e] obligation" to provide "timely and accurate daily usage records to the CLECs"; that Verizon "allows CLECs to choose the BOS-BDT bill format as the official bill of record"; that Verizon's "electronic bill relies on its paper bill, which KPMG has found to be acceptable"; that Verizon "has taken numerous steps to facilitate the availability of accurate electronic bills"; and that "[t]he commercial data presented by Verizon NJ, the general absence of specific CLEC claims of flaws in [Verizon's] electronic billing vehicle, and the independent third party reviews conducted by PricewaterhouseCoopers, persuade us that the Verizon NJ electronic BOS-BDT formatted bill meets the standards for section 271 billing compliance established by the FCC." BPU Report at 40.

The evidence here confirms that Verizon's New Jersey systems are working properly and that its performance is strong. For example, as Verizon demonstrated in its Application, the number of billing disputes in New Jersey and the amounts of such disputes are comparable to the levels in New York, where CLECs already have conceded that the billing systems allow them to compete. See Application at 68-69. Moreover, from August through December 2001, Verizon has consistently met or exceeded the benchmarks for providing daily usage files and wholesale paper bills to CLECs. See McLean/Wierzbicki/Webster Reply Decl. ¶¶ 42-44.[20] With respect to electronic bills, Verizon has calculated its performance in New Jersey under the billing measurements adopted in Pennsylvania, and its performance under these measurements also has been strong. See McLean/Wierzbicki/Webster Reply Decl. ¶¶ 48, 50. For example, from October through December, Verizon provided on time to CLECs 100 percent of the electronic bills in the BOS-BDT format in New Jersey. See id. ¶ 48. And during that same period, Verizon's performance in New Jersey also has been strong in acknowledging billing claims from CLECs that have elected the BOS-BDT bill as their bill of record, and in resolving these claims. See id. ¶ 50. Verizon's performance also has been excellent in Pennsylvania since the new billing measurements were implemented there. See id. ¶¶ 48-49.

ATX repeats (at 26-27) claims that it made during the state proceeding that Verizon's billing practices hamper ATX's ability to audit the electronic bills it receives in the BOS-BDT format. But the BPU has already specifically found that these claims — which lack any evidentiary support — do not cause Verizon to fail the checklist. See

[20] AT&T and ATX claim that Verizon's wholesale bills have an error rate that is higher than the error rate for Verizon's retail bills. AT&T at 22; ATX at 23-24. As Verizon has previously explained, however, the measurement of Verizon's wholesale bill accuracy is flawed. In particular, this measurement will in some instances compare the total dollar amounts credited to CLECs in multiple months with current charges billed to CLECs in a single month. See McLean/Wierzbicki/Webster Reply Decl. ¶ 45. Nonetheless, Verizon's performance on this measurement in New Jersey has been strong. With the exception of one month where the percentage adjustment for the wholesale bill was unusual, the average adjustments as a percentage of current monthly charges was less than 2 percent from August through December, for both retail and wholesale bills. See id. ¶¶ 46-47. And Verizon's performance has been equally strong in Pennsylvania. See id.

BPU Report at 40-41. Moreover, the specific practices about which ATX complains are in compliance with BOS-BDT standards and were implemented at the urging of CLECs. See McLean/Wierzbicki/Webster Reply Decl. ¶ 55. And the fact that ATX is the only CLEC to complain about these practices demonstrates that other CLECs are successfully able to audit their bills.

Billing Completion Notifiers. The BPU states that, "with input from the CLEC community through a collaborative process," it "has established several Carrier-to-Carrier Guidelines to measure the timely issuance of completion notifiers," and that "Verizon NJ's metrics data and calculations, based upon the Board-ordered C2C standards, show that Verizon, for the most part, is meeting or exceeding, those standards." BPU Report at 34. Moreover, the BPU notes that "Verizon NJ's completion notifier data were validated and replicated by KPMG as part of the OSS testing effort and found to be compliant." Id.

AT&T nonetheless claims that Verizon is not providing billing completion notifiers on time. In particular, it argues (at 22) that Verizon has not consistently met the BPU's 97-percent benchmark for returning billing completion notifiers by noon the next business day. As Verizon demonstrated in its Application, however, in August and September 2001, it returned billing completion notifiers to CLECs by noon the next business day 99 percent of the time for resale orders. See Application at 64. Moreover, with respect to UNE orders, Verizon returned billing completion notifiers to CLECs on time 94.31 percent and 96.41 percent of the time, respectively, in August and September, which is only slightly below the benchmark. See id. In October, Verizon's performance — as AT&T acknowledges — reflects the inclusion of billing completion notifiers for previous months; however, for current productions in that month, Verizon timely returned the billing completion notifiers for 97.40 percent of UNE orders and 99.26 percent of resale orders. See id.; McLean/Wierzbicki/Webster Reply Decl. ¶ 29. Moreover, from April through December 2001, Verizon provided more than 97 percent of the 241,000 billing completion notifiers for both UNE and resale orders by noon the next day. See McLean/Wierzbicki/Webster Reply Decl. ¶ 27.

III. THE NEW JERSEY BPU HAS FOUND THAT THE UNE RATES IT ADOPTED COMPLY IN ALL RESPECTS WITH THE ACT, AND DO NOT RAISE A LEGITIMATE PUBLIC INTEREST ISSUE.

As the New Jersey BPU confirms in its consultative report, it has "recently set new unbundled network element rates" that are "TELRIC compliant," and "will ensure that CLECs can lease portions of the Verizon network at prices that will enable them to enter the market." BPU Report at 2, 24.[21] The DOJ agrees with this conclusion, finding that the BPU-set "recurring rates appear to be generally within the broad range of TELRIC previously described by the FCC." DOJ Eval. at 7.

The BPU's unequivocal determination that it established prices for network elements based on the Commission's TELRIC methodology is entitled to great deference in the context of a section 271 proceeding, as the Commission itself has found.[22] Here, the New Jersey rates were the product of an exhaustive 18-month pricing proceeding in which the BPU concluded that it adhered to TELRIC principles. See Application at 92-

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[21] See also Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic New Jersey, Summary Order of Approval, Docket. No. TO00060356 (NJ BPU Dec. 17, 2001) ("December 17, 2001 Order") (Application, App. F, Tab 9).

[22] See, e.g., New York Order ¶¶ 238-244; see also 47 U.S.C. § 252(c)(2) (giving state commissions the primary role to "establish . . . rates for interconnection, services, or network elements."); AT&T, 220 F.3d at 615 (citation omitted) ("The FCC does not conduct de novo review of state pricing determinations in section 271 proceedings, nor does it adjust rates to conform with TELRIC. It assesses only whether those rates comply with basic TELRIC principles.").

94; Garzillo/Prosini Decl. ¶¶ 18-25. Each of the inputs used by the BPU is consistent with what this Commission has found TELRIC-compliant in prior section 271 orders, and no commenter here disputes that fact. This is hardly surprising: the New Jersey rates are the "lowest rates in the Verizon region and among the lowest in the country." BPU Report at 24. Under the Commission's well-settled precedent, this should be the end of the inquiry.

General Pricing Claims. The long distance incumbents first argue that the Commission should ignore whether the rates in New Jersey comply with TELRIC and instead impose the rates that were recently adopted by the New York PSC. See AT&T at 15; WorldCom at 12. But under the Commission's own well-settled precedent, there is no basis for such an approach.

First, as described above, the New Jersey BPU has recently established TELRIC rates in an exhaustive proceeding of its own based on the facts in New Jersey. The Commission has held that it will "place great weight" on a state commission's "active review and modification of [Verizon's] proposed unbundled network element prices, its commitment to TELRIC-based rates, and its detailed supporting comments concerning its extensive, multi-phased network elements rate case." New York Order ¶ 238. Given that the New Jersey BPU's own review clearly meets all of these criteria, there is no basis on which to disturb its findings.

Second, as both the Commission and the courts have recognized, TELRIC is not designed to produce the same result in every case.[23] Likewise, the Commission has held

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[23] See, e.g., AT&T, 220 F.3d at 615 ("application of TELRIC principles may result in different rates in different states"); Michigan Order ¶ 291 ("use of TELRIC

that there is no requirement that the rates in an applicant state compare favorably with the lowest rates adopted in any other state.[24] Consequently, the issue is not whether another state commission or this Commission might set different rates than those set by the New Jersey BPU. The issue is instead whether the BPU adhered to TELRIC principles, and the BPU has affirmed that it did.

Third, the new rates adopted in New York — unlike the previous rates — have not been demonstrated to be TELRIC-compliant. The rates in New York are indeed *below* what any reasonable application of TELRIC principles could produce. Accordingly, these rates do not necessarily satisfy the Act, and may well be so low as to be contrary to the public interest on the ground that they are likely to deter efficient facilities-based entry.

Fourth, the New York rates were only recently adopted and are not final, and the Commission has held that it will not consider new developments such as this when reviewing a pending section 271 application. See, e.g., New York Order ¶¶ 30-31; Texas Order ¶ 28. Moreover, as the D.C. Circuit has stated, "[i]f new information automatically required rejection of section 271 applications, we cannot imagine how such applications

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principles will necessarily result in varying prices from state to state because the parameters of TELRIC vary from state to state").

[24] See, e.g., Joint Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri, Memorandum Opinion and Order ¶ 56, CC Docket No. 01-194, FCC 01-338 (rel. Nov. 16, 2001) ("Arkansas/Missouri Order") (no requirement to "pass the benchmark test for each and every state that it might be compared with to show that its rates are within the reasonable range of what TELRIC would produce."); see also id. ("We disagree with AT&T's assertion that Kansas should be used for a rate comparison with Missouri's recurring charges rather than Texas."); id. ¶ 67 (relying on comparison between Arkansas and Kansas, but not Arkansas and Texas); Massachusetts Order ¶ 28 (rejecting AT&T's request that the Commission compare Verizon's rates to those "found to be TELRIC-based in the SWBT states of Texas, Kansas, or Oklahoma.").

could ever be approved in this context of rapid regulatory and technological change." AT&T, 220 F.3d at 617.

Fifth, and finally, the Commission will conduct a benchmark comparison of the rates in an applicant state with those in a previously approved state only where the applicant state did not conduct a TELRIC analysis for one or more rates — for example, where it adopted a rate from another state, or where the state did not appear to follow TELRIC principles in one or more respects. In these instances, the Commission performs a benchmark analysis to determine whether the rates, although they may not have been formulated in accordance with TELRIC principles, "nonetheless fall within the range that a reasonable TELRIC-based ratemaking would produce." Arkansas/Missouri Order ¶ 56; see also Pennsylvania Order ¶ 61. Here, the New Jersey BPU has affirmed unequivocally that it followed TELRIC principles in establishing wholesale rates, which means that a benchmark comparison to the rates in New York or elsewhere is inappropriate.

The long distance incumbents next argue that the Commission should ignore whether the UNE rates in New Jersey comply with TELRIC and consider instead whether they provide a gross profit margin that, in the long distance incumbents' own view, is high enough to stimulate broad-based entry to serve residential customers. See AT&T at 10, 13; WorldCom at 5-6. But the Commission has repeatedly held that, in order to satisfy the checklist, "incumbent LECs are not required, pursuant to the requirements of section 271, to guarantee competitors a certain profit margin." Arkansas/Missouri Order ¶ 65; see also Kansas/Oklahoma Order ¶ 92; Pennsylvania Order ¶ 70. And the D.C. Circuit has explicitly rejected the argument that the Commission must perform such an analysis in the context of determining whether rates satisfy the checklist under section 271(d)(3)(A):

> *[W]e can hardly find the Commission's rejection of appellants' proposal unreasonable. . . .* And it would be reasonable for the Commission to treat any questions raised by the low volumes, or by the appellants' evidence showing the difficulty of making a profit . . . as subsumed within the issue of TELRIC compliance. As the appellants concede, the lack of competition they allude to is neither a direct nor a conclusive proof of a checklist violation.

Sprint, 274 F.3d at 553-54 (emphasis added, citations omitted).

The long distance incumbents argue that the BPU still has not issued a final UNE rate order, and that, as a result, Verizon can still challenge the new rates. See AT&T at 9; WorldCom at i; see also NJCTA at 6-7.[25] But this is irrelevant given that there is simply no question that Verizon has a current legal obligation to implement the new rates, or that it actually has done so.[26] As the BPU found, Verizon "is now bound by law" to charge CLECs the newly adopted rates "effective December 17, 2001." BPU Report at 24.

[25] WorldCom also complains that Verizon has not provided electronic versions of its cost models. See WorldCom at 9; Frentrup Decl. ¶ 7. This is untrue. Verizon provided electronic versions of its cost studies during the course of the New Jersey state proceeding. See Garzillo/Prosini Reply Decl. ¶ 29. Moreover, Verizon already has placed the relevant cost studies into the record in this proceeding subject to the protective order that is in effect. See id.

[26] One commenter claims that the BPU was unable to verify whether Verizon had implemented the new rates prior to filing its Application. See ATX at 7. But the fact is that Verizon already has completed making the changes in its billing systems to begin charging competitors the new UNE rates, and its new bills will reflect these rates. See McLean/Wierzbicki/Webster Reply Decl. ¶ 58. As a "further precaution," the BPU "has required Verizon NJ to provide Staff copies of initial bills reflecting these new rates, as soon as those bills are available," and has "authorized Staff to require Verizon NJ to periodically provide copies of sample bills to confirm that it is continuing to bill lawful rates for its UNEs." BPU Report at 24. Given the extensive steps the BPU has taken to ensure that Verizon implements the newly adopted rates effective December 17, 2001, this claim must be rejected. See id. ("Verizon NJ has complied with the directives of the Secretary's letter [ordering Verizon to rerun its cost models to reflect Board established inputs and assumptions], and the Summary Order of December 17, 2001 implements TELRIC rates which Verizon NJ is now bound by law to charge CLECs effective December 17, 2001.").

Verizon also "has satisfied" the BPU's requirement that Verizon "provide to the Board by the end of business on January 10, 2002, an officer's certification that these rates are being charged effective December 17, 2001." Id.[27]

Finally, several commenters complain about the rate structure in New Jersey. As described below, however, the rate structure adopted by the BPU in no way alters the conclusion that the New Jersey rates are TELRIC-compliant. Moreover, most of the complaints that CLECs raise about the rate structure in New Jersey involve disputes that are currently pending before the BPU. See Garzillo/Prosini Reply Decl. ¶ 9.[28] There accordingly is no basis to consider those issues here. See, e.g., Pennsylvania Order ¶ 118.

Switching. The BPU has adopted unbundled switching rates that it has concluded are "TELRIC compliant." BPU Report at 24.[29] And no commenter disputes that the inputs used by the BPU to establish the New Jersey switching rates are consistent with what the Commission has found TELRIC-compliant in prior section 271 orders. See Garzillo/Prosini Decl. ¶¶ 36-37; Garzillo/Prosini Reply Decl. ¶¶ 8-15.

First, the BPU found that it followed TELRIC principles with respect to the switching discount used in the New Jersey switching rates. The BPU assumed that 79

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[27] The fact that Verizon could in the future challenge the BPU's rates is irrelevant to whether Verizon complies with the checklist today. See, e.g., Pennsylvania Order ¶ 100 & n.345 (finding that Verizon complies with the requirement to provide a single point of interconnection in each LATA, despite the fact that Verizon was appealing the State-level requirement that it do so in federal district court); Texas Order ¶ 386 (finding that SBC complied with its obligation to provide reciprocal compensation consistent with the Texas PUC's orders, despite the fact that SBC was appealing those orders).

[28] See also Letter from James H. Laskey, Counsel to WorldCom, Inc., to Henry Ogden, Esq., Acting Secretary, New Jersey Board of Public Utilities (Jan. 4, 2002).

[29] See also December 17, 2001 Order at 1.

percent of new demand would be met through the acquisition of new switches, while the remaining 21 percent would be met through growth additions. See Garzillo/Prosini Decl. ¶ 36. While WorldCom claims (at 11) that the BPU should have assumed that 100 percent of new demand would be met through new switches, the Commission has repeatedly rejected this claim. See, e.g., New York Order ¶¶ 243-246; Massachusetts Order ¶ 33; see also Kansas/Oklahoma Order ¶ 77. And the D.C. Circuit has upheld this determination. See AT&T Corp. v. FCC, 220 F.3d at 617-18 (holding that "the Commission reasonably concluded" that "inclusion of growth additions" "did not violate TELRIC").

Second, while AT&T and WorldCom argue that it was improper to include the cost for vertical features in the switching usage rate, rather than the port rate, the premise of their argument — that the port charge already includes the costs of such features — is simply incorrect. See Garzillo/Prosini Reply Decl. ¶ 12; AT&T at 15; WorldCom at 10-11. The New Jersey BPU has required Verizon to recover the costs of its vertical features through the switching usage rate, rather than through the port rate. See Garzillo/Prosini Reply Decl. ¶ 12. This is reflected by the fact that the port rate in New Jersey ($0.73) is far lower than the port rates found TELRIC-compliant in New York ($2.50) and Pennsylvania ($2.67). See id. There is accordingly no basis to suggest that Verizon is somehow benefiting from a double recovery.

Third, WorldCom is simply wrong that the BPU should have used lower usage assumptions that do not reflect peak usage. See WorldCom at 9-10. In New Jersey, the switching usage rate was calculated based on the costs that would be incurred to engineer Verizon's switches to handle peak traffic loads. See Garzillo/Prosini Reply Decl. ¶ 14.

Without citing any authority for its position, WorldCom nonetheless argues that the switching-usage rate in New Jersey should be lowered to account for the fact that Verizon's switches do not handle peak volumes on every day of the year. But that is irrelevant, given that Verizon's switches must be designed to be able to handle peak volumes both on the days it actually receives such volumes, as well as on the days it does not. See id. ¶ 15. Moreover, the usage assumptions used in New Jersey are the same as those used to develop the rates that were in place in New York and Massachusetts when those applications were granted. See id. And they are the same assumptions used in the Hatfield model that the long distance incumbents have previously endorsed, and comparable to the assumptions used in the Commission's own USF cost model. See id.

Finally, the BPU correctly permitted Verizon to charge for both originating and terminating minutes on an intra-switch call. See WorldCom at 12; Frentrup Decl. ¶ 14; ATX at 8-9. While WorldCom claims that the position taken by the BPU differs from the approaches taken by the commissions in Massachusetts and New York, it neglects to mention that the BPU's position on this issue is the same as the one taken by the Pennsylvania PUC, and upheld by this Commission.[30] This is particularly ironic, given that WorldCom has elsewhere conceded that the Pennsylvania rates have "le[d] to competitive entry . . . statewide in Pennsylvania."[31] In any event, as noted above, this

[30] See Pennsylvania PUC Consultative Report at 179, CC Docket No. 01-138 (FCC filed June 25, 2001) ("we find that MCIW's claim of Verizon PA double-billing for an intraswitch local call does not warrant a conclusion that Verizon PA has failed to comply with this checklist item"); Pennsylvania Order ¶¶ 60-61 (finding that switching rates in Pennsylvania are TELRIC-compliant).

[31] Testimony of Robert Lopardo, WorldCom, Technical Session Before the Massachusetts DTE, Docket DTE 99-271, transcript at 5606 (MA DTE Sept. 8, 2000) ("Lopardo Transcript"), App. B, Tab 565, to Application by Verizon New England for

issue is currently pending before the BPU. See Garzillo/Prosini Reply Decl. ¶ 9. And the simple fact is that it is entirely appropriate for Verizon to charge for both originating and terminating minutes on an intra-switch call, because Verizon incurs both costs for such calls, just as it does for an inter-switch call. See id. ¶ 10.

Loops. The BPU has likewise concluded that the loop rates it adopted in New Jersey comply with TELRIC. As is the case with the switching rates, the BPU formulated the loop rates in New Jersey using inputs that are consistent with what the Commission has found TELRIC compliant in prior section 271 orders. See Garzillo/Prosini Decl. ¶¶ 33-35; Garzillo/Prosini Reply Decl. ¶¶ 5-6. No commenter disputes this fact.

WorldCom nonetheless argues that several of the inputs that the New Jersey BPU used in calculating Verizon's loop rates are improper, because they use different assumptions from those used by the FCC's USF cost model. See WorldCom at 12-13; Frentrup Decl. ¶ 19. The Commission repeatedly has held, however, that "the USF cost model should not be relied upon to set rates for UNEs." Kansas/Oklahoma Order ¶ 84; see also Massachusetts Order ¶ 32 ("The Commission has never used the USF cost model to determine rates for a particular element, nor was it designed to perform such a task."). In any event, with respect to the two input assumptions that WorldCom contests (regarding the use of universal fiber in the feeder and fill factors), the BPU found that the assumptions it adopted were TELRIC-compliant. See Garzillo/Prosini Decl. ¶ 34 (citing relevant BPU orders); Garzillo/Prosini Reply Decl. ¶¶ 5-6. And these assumptions are entirely consistent with what this Commission has found TELRIC-compliant in the past.

Authorization To Provide In-Region, InterLATA Services in Massachusetts, CC Docket No. 00-176 (FCC filed Sept. 22, 2000).

For example, whereas the BPU found that it was appropriate to assume 60 percent fiber feeder in the loop, the Commission has recognized that TELRIC may be satisfied where 100 percent fiber feeder in the loop is assumed. See Garzillo/Prosini Reply Decl. ¶ 5; Pennsylvania Order ¶ 59; New York Order ¶¶ 248-249. Moreover, the fill factors adopted by the Board – 53 percent for distribution, 75 percent for copper, and 77.5 percent for fiber – are likewise consistent with what this Commission has previously found TELRIC-compliant. See Garzillo/Prosini Reply Decl. ¶ 6; Kansas/Oklahoma Order ¶¶ 79-80; Massachusetts Order ¶ 39.

Nonrecurring Hot-Cut Rates. Unable seriously to challenge Verizon's core rates for loops and switching, the long distance incumbents and others attempt to focus instead on a single rate, the nonrecurring charge for performing a hot cut in New Jersey.[32] As demonstrated below, the nonrecurring hot-cut rate in New Jersey complies fully with the Act and the Commission's rules, and there is no merit to the claims to the contrary. Moreover, at the request of the CLECs, the BPU is currently reconsidering the nonrecurring hot-cut rate in New Jersey, so there is no need to consider the issue here.[33]

The nonrecurring rate for performing a hot cut in New Jersey was established by the BPU following an exhaustive analysis and this rate accurately reflects the extensive costs that Verizon incurs to provide superior hot-cut performance to CLECs. See Garzillo/Prosini Reply Decl. ¶¶ 20-26; see Kansas/Oklahoma Order ¶ 98 (approving nonrecurring rates where the "record demonstrates that the [state commission] carefully analyzed the various costs studies submitted for nonrecurring charges, and was

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[32] See AT&T at 2-3, 12, 14 n.7; Sczepanski Decl. Table 1; XO at 17; Conversent at 2-3; ASCENT at 2-7; Cavalier at 3-5; see also DOJ Eval. at 7-8.

[33] See, e.g., Letter from Frederick Pappalardo, AT&T, to Henry Ogden, New Jersey BPU, Docket No. TO00060356 (Jan. 8, 2002).

committed to TELRIC principles in making its evaluation"). The BPU "applied the same approach in setting these rates as it did" for other rates in New Jersey. Arkansas/Missouri Order ¶ 71 n.207. Moreover, "[w]hen compared to the recurring cost of the element [in this case, the loop] and the length of time the NRC would likely be amortized," id., the rates in New Jersey are *lower* than the rates the Commission has found TELRIC-compliant in the past.

Verizon's performance in performing hot cuts in New Jersey is excellent, and has even earned the prestigious ISO 9000 certification from the International Organization for Standardization. See Lacouture/Ruesterholz Decl. ¶ 90; Lacouture/Ruesterholz Reply Decl. ¶¶ 12-13. This reflects the fact that, since the enactment of the 1996 Act, Verizon has worked intensely with CLECs and state regulators to develop superior hot-cut processes and systems. See Garzillo/Prosini Reply Decl. ¶ 19.[34] Of course, Verizon has incurred substantial costs in order to provide hot cuts on time and with minimal service disruption. See id. ¶¶ 20-24. And, given that CLECs were the ones who demanded that Verizon take these steps in the first place, it is entirely appropriate that they now be required to bear the costs.

The New Jersey BPU is the first state commission in Verizon's region to review and adopt the "next generation" of cost studies that reflect the new hot-cut processes that Verizon has implemented. The original cost studies and accompanying rates in New Jersey did not fully reflect these costs, nor do the rates in most of Verizon's other states.

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[34] Verizon's hot-cut processes are providing significant benefits to CLECs. In fact, Verizon's hot-cut processes have detected and helped correct mistakes that the CLECs themselves made and that, but for Verizon's processes and procedures, would have placed CLEC customers out of service. See Lacouture/Ruesterholz Reply Decl. ¶ 17.

See Garzillo/Prosini Reply Decl. ¶ 18; see also Arkansas/Missouri Order ¶ 71 n.207 ("The fact that the NRCs for these few isolated elements are more than in other . . . states is not sufficient grounds for us to deny the application."). Yet while New Jersey was the first state commission to acknowledge the significant costs in performing a hot cut, it is not the only one. Indeed, the New York PSC has just recently approved a nonrecurring hot-cut rate in New York that is more than $25 *higher* than the rate adopted by the BPU. See Garzillo/Prosini Reply Decl. ¶ 27. And the same competitors that complain about the hot-cut rate in New Jersey have repeatedly argued — including in this proceeding — that the rates established by the New York PSC should be the model for all other states to follow.[35]

Finally, the Commission has recognized that the nonrecurring rates need not be viewed in isolation, but may be considered along with "the recurring cost of the element and the length of time the NRC would likely be amortized." Arkansas/Missouri Order ¶ 71 n.207. Significantly, in New Jersey, the combined recurring and nonrecurring charges that a CLEC would pay for a two-wire analog loop provisioned through a hot cut is *lower* than the rates that were in effect when the Commission approved Verizon's applications in New York and Massachusetts, and comparable to the rates that were in effect when the Commission approved Verizon's Pennsylvania application, even using the most conservative assumptions (*i.e.*, that a CLEC retains a customer for three years, on average). See Garzillo/Prosini Reply Decl. ¶ 28. Moreover, performing this same comparison using the BPU's assumptions from the state proceeding (*i.e.*, that CLECs retain a customer for five years, on average), demonstrates that the combined rates in

[35] See, e.g., WorldCom at iii, 7; AT&T at 15-16.

New Jersey are lower than comparable rates found TELRIC-compliant in all three of those states, and also lower than the rates previously in effect in New Jersey. See id.

Price Squeeze. The long distance incumbents again attempt to repackage their substantive challenges to Verizon's rates as a price-squeeze claim. They argue that the difference between Verizon's existing UNE rates and the retail rates in New Jersey is too small for competing carriers to earn a gross profit that is large enough for these carriers to compete for residential customers. See AT&T at 42-43; WorldCom at 5-6. Accordingly, they claim that Verizon's long distance entry would not be in the public interest. These arguments are misguided as both a legal and factual matter.

As an initial matter, the Commission is under no obligation to perform a profit-margin analysis. In Sprint, the court held only that, where the local market is "characterized by relatively low volumes of residential competition," the FCC must *either* "pursue the[] price squeeze claim, *or* at the very least explain why the public interest does not require it to do so." Sprint, 274 F.3d at 553-54. And the court strongly hinted that a full-scale price-squeeze analysis is unnecessary and likely impractical in a section 271 proceeding. For example, it stated that "the potential scale of a serious price squeeze inquiry" may be incompatible with the "90-day limit [that] constrains the scope of the Commission's inquiries." Id. at 555-56. The court also indicated that a price-squeeze analysis may be futile, as "the residential market may not be attractive to competitors even if UNE costs are at the lower end of TELRIC." Id. at 556. Moreover, the court's decision did not purport to alter the long-standing rule that "the [FCC's] judgment regarding how the public interest is best served is entitled to substantial judicial deference." FCC v. WNCN Listeners Guild, 450 U.S. 582, 596 (1981).

In New Jersey, there is ample legal justification for not conducting any analysis of whether the rates adopted by the BPU would provide an adequate profit margin.

First, courts have held that a price squeeze can exist only where a firm has monopoly control over an essential input, and its price for that input is "higher than a 'fair price.'" United States v. Aluminum Co. of Am., 148 F.2d 416, 437-38 (2d Cir. 1945); see also Town of Concord v. Boston Edison Co., 915 F.2d 17, 18 (1st Cir. 1990). These conditions clearly are *not* met here. The price-squeeze claim advanced by the long distance incumbents relates exclusively to the price of the UNE platform, but the platform is in no way an essential input given that the Act makes available a variety of other means in which to gain access to Verizon's network. For example, competitors also may serve customers through resale of Verizon's services, by obtaining stand-alone UNEs from Verizon, by interconnecting their own facilities with those of Verizon, or by some combination of these options. And the Act guarantees that competing carriers can *always* avoid a price squeeze by reselling Verizon's services, the rates for which must be set at a discount from Verizon's retail rates. See 47 U.S.C. § 251(c)(4); id. § 252(d)(3) ("a State commission shall determine wholesale rates [for resold services] on the basis of retail rates").[36]

Moreover, there is no question that Verizon is offering the UNE platform at a "fair price." As demonstrated above, competitors may obtain the platform at rates the BPU adopted and found TELRIC-compliant. And the courts have held that where, as

[36] The Commission's own lawyer made just this point before the D.C. Circuit in the appeal of the Kansas/Oklahoma Order. See Transcript of Oral Argument at 28, Sprint Communications Co. v. FCC, Nos. 01-1076, et al. (D.C. Cir. Sept. 17, 2001) (noting that the "pricing provision for resale" under sections 251(c)(4) and 252(d)(3) "directly addresses the price squeeze"); id. at 29 ("competitors can compete with resale even assuming that there is a price squeeze problem on the network element side").

here, both wholesale and retail rates are fully regulated, the concept of a price squeeze does not apply. In Town of Concord, for example, then-Judge Breyer stated that "'normally' a price squeeze will not constitute an exclusionary practice in the context of a fully regulated monopoly." 915 F.2d at 29.

Second, the Commission can and should find that conducting a profit margin analysis is unnecessary because any policy that attempts to force UNE prices down to the lowest possible level is inconsistent with the goals of the Act and the Commission to promote facilities-based competition. As Chairman Powell recently stated: "Facilities-based competition is the ultimate objective" of the Commission's competition policy.[37] Driving rates down to the lowest possible level would undermine that objective. The Commission itself recently noted that its policies might be having just such an effect, and has accordingly sought comment "on whether we should modify or limit incumbents' unbundling obligations going forward so as to encourage incumbents and others to invest in new construction." UNE Triennial Review NPRM ¶ 24. Facilities-based CLECs have expressed the very same concerns.[38] And one of the Commission's own economists has

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[37] Michael K. Powell, Digital Broadband Migration — Part II at 4 (Oct. 23, 2001), at http://www.fcc.gov/Speeches/Powell/2001/spmkp109.pdf; see also id. (unbundling policy "should provide incentives for competitors to ultimately offer more of their own facilities").

[38] See, e.g., Ex Parte Letter from Kevin M. Joseph, Allegiance Telecom, to Magalie R. Salas, FCC, CC Docket Nos. 96-98, 96-262, 97-146, Att. at 2 (Feb. 2, 2001) (expanding "the availability of the UNE-P" "threatens to harm those CLECs that have built their own facilities and do not need to rely on the UNE-P to serve customers"); Ex Parte Letter from Kim Robert Scovill, Vice President and General Counsel, Choice One Communications, Inc., to Magalie Roman Salas, Secretary, FCC, CC Docket No. 96-98, at 1-2 (Mar. 12, 2001) ("We are unaware of any reason why another carrier could not replicate [an ILEC's network] using unbundled loops and self-deployed switches, even in second and third tier urban markets. The Commission's rules governing unbundled local switching should reflect this fundamental fact.").

recently found, based on the first comprehensive study of its kind, that "states with lower UNE prices have less facilities-based entry."[39]

Finally, unique characteristics of local telecommunications markets in New Jersey mean that "the residential market may not be attractive to competitors even if UNE costs are at the lower end of TELRIC." Sprint, 274 F.3d at 556. As the DOJ notes, even though "conditions in the New Jersey local telecommunications market appear favorable to fostering competition," and "[c]ompetitors have made progress in penetrating the business market," competitors have not made the same inroads in the residential market. DOJ Eval. at 2, 4. As Verizon demonstrated in its Application, factors *other than* the level of wholesale rates are responsible for the fact that competitors have chosen not to serve residential customers in New Jersey. This is proven by the fact that Verizon offers CLECs who are serving business customers the exact same systems, processes, procedures — and wholesale rates — as it offers to CLECs serving residential customers. See Application at 85; Taylor Decl. ¶ 6. Moreover, CLECs have admitted before the BPU that retail rates for residential local service in New Jersey — which are the lowest of their kind in the entire country — are an "'inhibitor' to competition in the local land line residential market."[40] The BPU accordingly found that "Verizon NJ has provided evidence that a number of carriers in New Jersey serve large numbers of business customers through facilities-based service, and the fact that they do not also provide

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[39] James Eisner, FCC, & Dale Lehman, Fort Lewis College, Regulatory Behavior and Competitive Entry, for presentation at the 14th Annual Western Conference Center for Research in Regulated Industries, June 28, 2001, at 2.

[40] See New Jersey BPU, Status of Local Telephone Competition: Report and Action Plan, Docket No. TX98010010, at 16 (July 1998) (Application, App. E, Tab 2); Application at 83-84 (providing additional quotes from CLECs to this effect).